UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

GABRIEL PONCE BERMUDEZ,

Petitioner,

Case No.: 2:26-cv-01726-JES-KRH

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, et al.

Respondents.

_____________________________________/

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Gabriel Ponce Bermudes ("Petitioner"), who has been ordered removed by an immigration judge ("IJ"), alleges that his detention by the United States Immigration and Customs Enforcement ("ICE") has become unconstitutionally prolonged and that his removal is not significantly likely to occur in the reasonably foreseeable future. (Doc. 1). Because Petitioner has not cooperated with removal, and ICE properly revoked his order of supervision, the Court should deny the writ and dismiss the action.

FACTUAL BACKGROUND

1. Petitioner is a native and citizen of Cuba. (Composite Ex. A at 19).

2. On October 27, 2011, Petitioner was ordered removed to Cuba., (Composite Ex. A at 12).

3. On October 30, 2025, the Petitioner's order of supervision was revoked and a Notice of Removal to Mexico was served on December 12, 2025. (Ex. B at ¶ 4, Hernandez Decl., Dated June 9, 2026, and Composite Ex. A at 4-5 and 17).

4. Petitioner refused to sign the Notice of Removal to Mexico. (Composite Ex. A at 17).

5. On December 12, 2025, Petitioner received an Alien Informal Interview Upon Revocation of Supervision. (Composite Ex. A at 6).

6. Upon revocation of the order of supervision, Petitioner was detained at Florida Soft-Sided Facility-South. (Ex. B at ¶ 5).

7. "On January 31, 2026, Petitioner was transferred to El Paso, Texas to execute the removal order to third country (Mexico)". (*Id.* at ¶ 6).

8. "On February 16, 2026, Petitioner refused removal to Mexico. He was then returned to Florida Soft Sided Facility-South". (*Id.* at ¶ 7).

9. "[Petitioner] will receive a Notice of Removal to Mexico 24 hours prior to his transfer to the relevant field office". (*Id.* at ¶ 9).

10. "The receiving ERO field office will then notify Mexico's Instituto Nacional de Migracion (INM) of [Petitioner's] upcoming removal to Mexico". (*Id.* at ¶ 10).

11. "Following INM's final acceptance, he will immediately be transported to the Customs and Border Patrol corresponding port of entry for removal to Mexico". (*Id.* at ¶ 11).

12. "Each ICE filed office along the southwest border that processes third-country removals to Mexico removes a varying amount each week. Removals take place from each corresponding office from once a week to several times a week". (*Id.* at ¶ 12).

13. "Therefore, ICE determines that there is a significant likelihood of removal in the reasonably foreseeable future". (*Id.* at ¶ 13).

14. "ICE will follow procedures for third-country removals for the petitioner as set forth in the Guidance Regarding Third Country Removals, issued by the DHS Secretary on March 30, 2025". (*Id.* at ¶ 14).

15. "Petitioner is currently detained at Florida Soft Sided Facility South". (*Id.* at ¶ 15).

16. Petitioner filed the instant Petition for a Writ of Habeas Corpus on May 21, 2026. *See* Doc. 1.

17. At the time this petition was filed on May 21, 2026, Petitioner had been detained for 203 days. (Ex. C, Detention History, Accurate as of June 9, 2026).

MEMORANDUM OF LAW

I. LEGAL STANDARD

Federal courts may grant writs of habeas corpus for a petitioner "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner bears the burden of proving his custody violates federal law.

Whitfield v. United States Sec'y of State, 853 F. App'x 327, 329 (11th Cir. 2021).

II. CERTIFIED HABEAS RETURN

In a habeas case, the respondent "shall make a return certifying the true cause of the detention." 28 U.S.C. § 2243 ("The person to whom the writ or order is directed shall make a return certifying the true cause of the detention."). Petitioner is detained pursuant to 8 U.S.C. §§ 1231(a)(1)(C) and 1231(a)(6).

III. ARGUMENT

Generally, this Court has jurisdiction in a habeas corpus proceeding to consider a challenge to a petitioner's continued detention by immigration authorities. *See Zadvydas v. Davis,* 533 U.S. 678 (2001). While the Court has jurisdiction to hear Petitioner's challenge to his continued detention, the Petition should be dismissed because Petitioner has failed to establish that his removal is not significantly likely to occur in the reasonably foreseeable future as his own failure to comply has prevented removal.

A. Petitioner's Detention is Lawful Under 8 U.S.C. § 1231(a)(6).

Following entry of an order of removal, immigration detention is governed by 8 U.S.C. § 1231. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 544 (2021) ("§ 1231 explains what to do if the alien is ordered removed."). Pursuant to section 1231(a)(1)(A), "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." Detention during the removal period is mandatory. 8 U.S.C. § 1231(a)(2)(A). "The 90-day removal period shall be extended, and the noncitizen may remain in detention, if the noncitizen (1) 'fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure' *or* (2) 'conspires or acts to prevent the alien's removal.'" *Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1313 (11th Cir. 2019) (quoting 8 U.S.C. § 1231(a)(1)(C)). The Government may also detain an alien beyond the statutory removal period if the alien is inadmissible under 8 U.S.C. § 1182, was ordered removed because of certain criminal convictions, or has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal. 8 U.S.C. § 1231(a)(6). If such an alien is later released, they are subject to supervision as provided for in 8 U.S.C. § 1231(a)(3).

In *Zadvydas*, the Supreme Court held that indefinite detention of aliens raises serious constitutional concerns. 533 U.S. at 690-99. Once an order of removal is final, the Government may continue to detain an alien only for a reasonable amount of time. *Id.* at 699-701. The reasonableness of the detention is to be measured "primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Id.* at 699. The Supreme Court held that six months is a presumptively reasonable period to detain a removable alien awaiting deportation. *Id.* at 700-01. "Although not expressly stated, the Supreme Court appears to view the six-month period to include the 90-day removal period [from section 1231(a)(1)(A)] plus 90 days thereafter." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002).

After that six-month period has passed, if the alien "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 1052 (quoting *Zadvydas*, 533 U.S. at 701). Thus, "in order to state a claim under *Zadvydas* the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* If an alien makes these showings, then the burden shifts to the Government to rebut the presumption with sufficient evidence establishing that there is "a significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

B. Petitioner Has Failed to Cooperate with Removal.

As noted above, an alien may continue to be detained where he has acted to prevent his removal. 8 U.S.C. § 1231(a)(1)(C) states:

> The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.

The courts have generally taken two different approaches when applying § 1231(a)(1)(C) in the context of a *Zadvydas* claim:

> Many courts conduct an analysis using the burden-shifting framework from *Zadvydas*, considering an alien's failure to cooperate in determining whether the alien can show "good cause" to believe that there is no significant likelihood of removal in the reasonably foreseeable future. Other courts contend that an alien's failure to cooperate precludes an analysis under *Zadvydas* altogether. Finally, some courts find an alien's failure to cooperate or filing of litigation equitably tolls, possibly indefinitely, the six-month removal period. In fact, a couple of courts

> covered both bases finding obstruction tolled the removal period, and in the alternative, the alien did not meet the *Zadvydas* standard.

Glushchenko v. United States Dep't of Homeland Sec., 566 F. Supp. 3d 693, 705-06 (W.D. Tex. 2021) (footnotes omitted). In *Akinwale*, the Eleventh Circuit recognized that the six-month period may be tolled if the alien "'acts to prevent [his] removal'" by filing litigation "challeng[ing] issues related to his removal order and his post-removal period detention." *Akinwale*, 287 F.3d at 1052 n.4 (quoting 8 U.S.C. § 1231(a)(1)(C)). More recently, the Eleventh Circuit noted that "if the removal period was extended by operation of § 1231(a)(1)(C), then ICE can continue to detain [the petitioner] because 'the keys to [the petitioner's] freedom [are] in his pocket and [he] could likely effectuate his removal by providing the information requested,' so he 'cannot convincingly argue that there is no significant likelihood of removal.'" *Singh*, 945 F.3d at 1314 (quoting *Pelich v. Immigration & Naturalization Serv.*, 329 F.3d 1057, 1060 (9th Cir. 2003)); *see Vaz v. Skinner*, 634 F. App'x 778, 782 (11th Cir. 2015) ("Because Petitioner is responsible for thwarting his removal, he cannot show that there is no reasonable likelihood that he will not be removed in the reasonably foreseeable future if he cooperates with DHS and voluntarily signs for the travel document."); *Oladokun v. U.S. Att'y Gen.*, 479 F. App'x 895, 897 (11th Cir. 2012) ("Oladokun fails to 'provide[ ] good reason to believe that there is no significant likelihood of [his] removal in the reasonably foreseeable future,'" because his "non-cooperation is the only barrier to his removal." (quoting *Zadvydas*, 533 U.S. at 701)).

This rule even applies where—as here—Petitioner refuses removal to a third country willing to accept the alien. *Laguardia v. ICE*, No. C26-4003-LTS-KEM, 2026 WL 440749, at *2 (N.D. Iowa Feb. 17, 2026) (applying when Cuba petitioner refused removal to Mexico); *Rivero v. FNU LNU*, No. 2:26-cv-00349-KG-KRS, 2026 WL 607416, at *1 (D.N.M. Mar. 4, 2026) (same). INA § 241(b)(2)(E)(codified as 8 USC § 1231(b)(2)(e)), provides broad authority for ICE to effectuate removal of aliens subject to final order to alternative countries, including another country whose government will accept the alien.

Here, ICE detained Petitioner on October 30, 2025, in anticipation of his removal. (*See* Ex. B). ICE intends to remove Petitioner to Mexico. *Id.* at ¶ 6. Petitioner refused to sign the Notice of Removal to Mexico. (Composite Ex. A at 17). Petitioner was taken to the southern border and refused removal to Mexico. *Id.* at ¶ 7. Because Petitioner has not cooperated with efforts to remove him by refusing removal to Mexico, the removal period is tolled pursuant to 8 U.S.C. § 1231(a)(1)(C).

As some courts have recognized, third-country removal to Mexico has been difficult recently for aliens—like Petitioner—who refuse departure to that nation. *Leyva Lambert v. ICE*, No. EP-26-CV-00427-DB, 2026 WL 926216, at *2 (W.D. Tex. Apr. 6, 2026); *Gustavo Delgado v. Bondi*, No. 2:26-cv-00649-GJL, 2026 WL 914806, at *4 (W.D. Wash. Apr. 3, 2026). But nothing about this is a get-out-of-removal-free-card. So the only thing stopping removal is Petitioner's refusal. Because the failure to remove is the result of Petitioner's conduct, detention is still permitted. 8 U.S.C. § 1231(a)(1)(C); *Pelich*, 329 F.3d at 1060.

Petitioner has no enforceable rights to prevent removal to an acceptable third country that ICE already provided. Or—at least—he cannot use that his refusal for leverage to effectively stay in this country on the off chance that maybe ICE finds a country Petitioner deems subjectively acceptable. After all, the statute on third-country removal is plain: an alien does not get a trump card to pick his country of removal. 8 U.S.C. § 1231(b)(1)-(2). While an alien can designate a country, the Attorney General has express statutory power to disregard and remove elsewhere under many circumstances. *Id.* § 1231(b)(2)(A)-(E).

On these facts, Petitioner has no *Zadvydas* claim. ICE is doing its part to secure removal to Mexico and intends to remove him. If Petitioner wants release from detention, he holds the "keys to his freedom in his pocket" by complying with removal to Mexico. *Pelich*, 329 F.3d at 1060. As it stands now, however, Petitioner has impeded removal to an acceptable third country that ICE attempted to provide. Until Petitioner complies with ICE's removal efforts or removal to Mexico is otherwise not available, he has no *Zadvydas* claim. 8 U.S.C. § 1231(a)(1)(C).

C. Petitioner Has Not Demonstrated that His Removal Is Not Reasonably Foreseeable.

Petitioner has failed to provide any evidence to suggest that his removal is not significantly likely to occur in the reasonably foreseeable future. In *Akinwale*, the Eleventh Circuit—in establishing a two-part test—concluded that "to state a claim under *Zadvydas* the alien **not only** must show post-removal order detention in excess of six months **but also** must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 287 F.3d at 1052 (emphasis added). Petitioner alleges that ICE can't remove him to Mexico because he doesn't possess a travel document for Mexico and ICE has not demonstrated official authorization from Mexico. (Doc. 1 at ¶ 13). However, it is clear that the prerequisite to obtaining approval from Mexico is Petitioner's cooperation with efforts to remove him to Mexico and thus he has failed to produce evidence that his removal to Mexico is not likely to occur once he cooperates with ICE's third country removal efforts including signing the Notice of Removal to Mexico. (*See* Ex. B and Composite Ex. A at 17).

The 90-day removal period found in 8 U.S.C. § 1231(a)(1)(A) is extended, and the noncitizen may remain in detention, if the alien (1) "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure" or (2) "conspires or acts to prevent the alien's removal" 8 U.S.C. § 1231(a)(1)(C). Here, ICE intends to effectuate Petitioner's removal, but Petitioner refused to sign the necessary paperwork and refused removal to Mexico upon arrival at the southern border. If Petitioner cooperates with removal efforts, his removal is reasonably foreseeable. If Petitioner fails to cooperate, he "cannot convincingly argue that there is no significant likelihood of removal." *Singh v. U.S. Att'y Gen.*, 945 F.3d

1310, 1314 (11th Cir. 2019) (quoting *Pelich v. Immig. & Naturalization Serv.*, 329 F.3d 1057, 1060 (9th Cir. 2003).

D. ICE has complied with its regulations regarding revocation of an order of supervision.

Petitioner asserts that he cannot be returned to immigration detention without first revoking his order of supervision. (*See* Doc. 1 at ¶ 13). Petitioner appears to be relying on a misconception that imposed limits on ICE's unilateral ability to revoke a bond issued under 8 U.S.C. § 1226(a) apply here. (*See* Doc. 1 at ¶ 13). Petitioner's argument is incorrect because his detention is governed by 8 U.S.C. § 1231(a). Significantly, 8 U.S.C. § 1231(a), unlike 8 U.S.C. § 1226(a), authorizes detention without a pre-detention hearing, and detention under U.S.C. § 1231(a) during both the 90-day removal period and during the post-removal period is constitutionally permissible without any pre-deprivation process. *Zadvydas v. Davis*, 533 U.S. 678, 688-89 (2001). Due process does not require the extra-regulatory, pre-detention procedures that Petitioner is asking this Court to engraft upon 8 U.S.C. § 1231(a) and its regulatory framework. Furthermore, nothing in 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 requires the revocation of supervision to occur prior to detention and, in any event, Petitioner's supervision was revoked the day he was returned to custody. (Composite Ex. A at 4).

Even were some further notice and process required, the proper relief would be ordering additional process, not outright release. *See Tran*, 2026 WL 672969 at *9

("The writ of habeas corpus is a profound remedy, not a penalty for bureaucratic typos."); *see also Yi Mei*, 2025 WL 2258586, at *10 n.19 (noting "even if these procedures have not yet been completed, courts have found that such procedures may take place after the detention has occurred"). The remedy sought—release from custody—is "an overreach and not the appropriate cure." *Tanha*, 2025 WL 2062181, at *6; *see also Tran*, 2025 WL 2085020, at *6-7 (holding errors in notice procedure "do not entitle [petitioner] to release from detention"). The proper remedy to any procedural deficiency would be—at most—ordering ICE to provide Petitioner with whatever additional process the Court deems appropriate. *See, e.g.*, *I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025) ("And while habeas is a proper vehicle to challenge detention that is without statutory authority or violative of the Constitution, it is not a proper vehicle for vindicating every procedural error the Government may have committed along the way.").

True, some courts have ordered release when they believed ICE should have provided more robust notice and hearing. *E.g.*, *Grigorian*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *8-10. Federal Respondents respectfully disagree. The regulations mandate notice and—in some instances—an opportunity to be heard via an informal interview. 8 C.F.R. §§ 241.4(l)(1); 241.13(i)(3). And if that does not result in release, the alien can request a more thorough review. 8 C.F.R. §§ 241.4(*l*)(3); 241.13(j).

CONCLUSION

Based on the foregoing reasons and citations of authority, the Court should deny the instant Petition and dismiss this action. However, if the Court grants the Petition and orders Petitioner's release, such release "shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3); *Zadvydas*, 533 U.S. at 699-700 (holding that when continued detention is unreasonable because removal is not reasonably foreseeable, "the alien's release may and should be conditioned on any of the various forms of supervised release.").

Dated: June 9, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 9, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, and mailed a copy of the foregoing to:

Gabrial Ponce Bermudez
[redacted]

Petitioner

/s/ Matthew T. Brodersen
MATTHEW T. BRODERSEN
Special Assistant United States Attorney